Supreme Court of the United States

OCTOBER TERM, 1915.

No. 657.

MAX JAFFE AND OTHERS, COMPRISING THE FIRM OF KNAUTH, NACHOD & KUHNE,

Appellants,

versus

MAURICE E. A. WESTPHALEN AND OTHERS,

Appellees.

BRIEF ON BEHALF OF MAURICE E. A. WESTPHALEN AND OTHERS, APPELLEES.

SYLLABUS.

1. A bankruptcy adjudication brings to the Court making it the property of the bankrupt wherever situated, placing the property in *custodia legis*, with full right of the Court to administer the estate.

2. Where an ancillary suit is brought in a different jurisdiction by a bankrupt's trustee, to recover alleged assets of the bankrupt and transfer them to the proper Court for administration, adverse claimants may not intervene and impress a trust in their favor on such alleged assets.

3. Where alleged assets of a bankrupt are sought to be sequestered in an ancillary suit brought by the bankrupt's trustee, and are, by agreement between the trustee and the defendant, sold and converted into money, the Court in which the ancillary suit is brought has no jurisdiction of a bill, whether original or by intervention, subsequently filed on behalf of adverse claimants who seek to impress a trust upon such alleged assets, the proper forum for relief sought being the bankruptcy court of original jurisdiction.

BRIEF STATEMENT OF THE PROCEEDINGS.

This case comes here on appeal from a judgment of the District Court for the Northern District of Florida, sustaining a motion to dismiss the amended bill of complaint for want of jurisdiction of the subject-matter of the litigation and for the reason that "the proper forum for the relief sought by the complainants is the bankruptcy court for the Northern District of Alabama." (Rec., p. 36.) The appeal is taken direct to this Court on the ground that the jurisdiction of the trial Court is in issue, and that the case involves the construction and application of the Constitution

of the United States and the constitutionality of certain laws of the United States.

The issues here involved are substantially the same as those presented in **No. 420, "Knauth, Nachod & Kuhne vs. Latham & Co.,** and in **No. 656, "Max Jaffe vs. Wm. S. Lovell,"** reported in **219 Fed. 721,** both of which cases are brought here on writ of error and consolidated with this case on motion of appellant.

Both the Circuit Court of Appeals, in **219 Fed. 721,** and the trial Court in this case (Rec., p. 36) based their judgment on the want of jurisdiction.

The motion to dismiss the bill of complaint of appellant was based on both the want of jurisdiction and the want of equity in the bill, and contains ten grounds upon which appellees rely, which will be found in the record, at page 30. In so far as the question of want of jurisdiction is concerned, the following is a brief statement of the allegations of the motion on that subject:

1. The bill regarded as a bill of intervention is not in subordination to or in recognition of the propriety of the suits of respondents (Westphalen & Co.) against the defendant (Lovell, Trustee), nor are the purposes of the bill germane to those of the suit of those respondents against said trustee.

2. The bill may not be maintained as an original bill because at the time this suit was brought there was no personal jurisdiction of the Court over these respondents, nor of the defendant, Lovell, as trustee; nor was the property the subject-matter of the suit within the Court's jurisdiction or in its custody.

3. Prior to the filing of this bill, the cotton constituting the subject-matter of the suit of Westphalen & Co. against Lovell, Trustee, had by agreement between Westphalen & Co. and Lovell, Trustee, been sold and the proceeds thereof deposited in banks at Pensacola to abide the result of the litigation between Westphalen & Co. and Lovell, Trustee, and for no other purpose. Neither the cotton nor the proceeds thereof were ever impounded or in any sense in the custody of the Court in which the bill of complainants was filed. None of the property referred to was within the jurisdiction of the Court at the time the suit was brought. The bank deposits referred to, in so far as the situs thereof is concerned, followed the residence of the depositors, which was not within the jurisdiction of the Court. The respondents, Westphalen & Co., were and are residents of France, and Lovell, Trustee, was and is a resident of Alabama. The administration of the bankrupt estate was and is now pending in the Northern District of Alabama. Neither Westphalen & Co. nor Lovell, Trustee, have been served, or can properly be served, with process to answer this bill. The banks in which the deposits were made have not been made parties defendant.

All of the facts upon which the motion to dismiss is predicated appear affirmatively in the bill of complaint.

ARGUMENT.

I.

The adjudication of bankruptcy in the District Court for the Northern District of Alabama brought the property of the bankrupts wherever situated into *custodia legis*, and that Court thus acquired the full right to administer the estate.

In a similar case (**Lazarus vs. Prentice, 234 U. S. 266**), the Court, speaking through Mr. Justice Day, said:

> "The filing of the petition and adjudication in the bankruptcy court of New York brought the property of the bankrupts wherever situated in *custodia legis*, and it was thus held from the date of this filing of the petition, so that subsequent liens could not be given or obtained thereon, nor proceedings had in other courts to reach the property, the court of original jurisdiction having acquired the full right to administer the estate under the bankruptcy law." Citing—
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> **Mueller vs. Nugent, 184 U. S. 1.**
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> **Acme Harvester Co. vs. Beekman Lumber Co,. 222 U. S. 300.**
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> See also:
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> **White vs. Schloerb, 178 U. S. 542.**
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> **Bryan vs. Bernheimer, 181 U. S. 188.**

II.

The appellant, therefore, had no right to intervene in an ancillary suit instituted by the trustee to set aside a preferential transfer. If they are entitled to impress a trust upon any assets of the bankrupts in the hands of the trustee, no good reason appears why they should not proceed in the court of original jurisdiction. The sole object of the ancillary suit by the trustee is to collect assets of the bankrupt and transfer them to the proper court for administration, and the proper forum to secure recognition of a lien upon said assets or to "impress a trust" thereon is in the bankruptcy court.

III.

Regarded as an original bill, the motion to dismiss is well founded, because at the time the bill was filed there was no personal jurisdiction of the Court over the respondents, nor was the property, the subject-matter of the suit, within the Court's jurisdiction or in its custody.

The litigation over the cotton started by a petition in behalf of Lovell & Frost, Receivers, *et al.*, in an ancillary bankruptcy proceeding, in which the Court granted an injunction order restraining the Louisville and Nashville Railroad Company from moving or in any way disposing of any cotton in its possession or under its control upon shipments by or for account of Knight, Yancey & Co. The defendants, Westphalen & Co., then filed a petition for the release of certain cotton described in a schedule annexed to the petition. Both Lovell and the Louisville and Nashville Railroad filed objections to the return of the cotton, which the Court maintained, but granted Westphalen & Co. permission to institute suit to recover the same. Thereupon Westphalen & Co. instituted suit by a bill of complaint in equity against the trustee and the Louisville and Nashville Railroad Company to establish their title, ownership and right of possession to the particular cotton claimed by them. Thereafter, by consent of Westphalen & Co., Lovell and the railroad, the said cotton was delivered to Lovell, as temporary custodian, and sold, and the proceeds deposited in two banks in Pensacola to the joint credit of Lovell, Trustee, and of Westphalen & Co. Thereafter, and for the first time, the appellants, Knauth, Nachod & Kuhne, filed their bill of complaint herein, by which they seek to "impress a trust" upon the cotton. The defendants,

Westphalen & Co., Lovell, Trustee, and the Louisville and Nashville Railroad Company, were made parties defendant. The two banks holding the deposits were not made parties.

It is manifest that the Court has no personal jurisdiction over the defendants, Westphalen & Co., as they were and are citizens and residents of France, and are not represented in this country by anyone authorized to accept service. The defendant, Lovell, Trustee, is a resident of Alabama, and the Court likewise had no jurisdiction over him. The defendant, Louisville and Nashville Railroad, was made party, but at the time the bill was filed did not have possession of the cotton which had been delivered by consent to Lovell, Trustee, and sold. The railroad company therefore had no interest in the controversy.

It is likewise clear that the Court had no jurisdiction over the cotton. The railroad company, it is true, had been restrained from surrendering the cotton, but subsequently the cotton, by consent of the party who secured the injunction, was taken from its possession, was delivered to Lovell, Trustee, and was then sold and converted into money. The deposit of the funds to the joint credit of Lovell and Westphalen & Co. in the Pensacola bank does not give this Court jurisdiction, because the situs of the deposits followed the residence of the depositors which was not within the jurisdiction of the Court. Finally, neither of the said banks were made parties defendant to the bill, and are in no sense before the Court. The cotton having been sold and converted into money, and the banks not having been made parties, there is, consequently, no property within the jurisdiction of the Court.

We respectfully submit, therefore, that, whether regarded as a bill of intervention or as an original bill, the

Court has no jurisdiction either over the persons of the defendants or of the subject-matter of the bill, and that the proper forum of the action brought by appellants is the bankruptcy court of original jurisdiction, and that the judgment appealed from be affirmed.

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Of Counsel for Appellees.